IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 369 OF 2003

IN

SUMMARY SUIT NO. 3969 OF 2002

M/s.Nilkamal Plastics .. Plaintiff

versus

The Kerala Agro Industries Corpn.Ltd.. Defendant

...

Mr.K.S. Shetty for the plaintiff.

Mr.Mahesh Londhe i/b Sanjay Udeshi & Co. for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 24th January 2005.

P.C.:

1. Mentioned at 4.30 p.m by the learned counsel for the parties. By consent, order of dismissal of default is set aside and Summons for Judgement is taken up for hearing forthwith.

2. The plaintiff has filed this suit for recovery of the balance of the value of the goods sold and delivered to the defendant. Perusal of paragraph nos.2 and 6 of the plaint shows that supplies were made under three different invoices. The demands of amount were made on three different occasions. The total goods supplied were worth Rs.4,89,919/- and payment of Rs.4,70,000/- has been made leaving a principal sum of Rs.19,919/-. The present suit is filed for recovery of Rs.1,24,000/- though the principal sum of only Rs.19,000/- is due, the plaintiff claims to have made appropriations in a different manner and claims a principal sum of Rs.60,000/-. The manner of appropriations is not narrated in the plaint indicating that the suit is based on accounts. In such circumstances, the defendant would have to be granted unconditional leave. Furthermore, it appears that part of the cause of action has not arisen within the jurisdiction of this Court. No leave under clause 12 of the Letters Patent has been taken. Hence also, the defendant would be entitled to an unconditional leave. Hence, the defendant is granted unconditional leave to defend the suit.

3. The defendant to file written statement within a period of one month. Suit shall stand transferred to the list of commercial causes.

D.G. KARNIK, J